

PART 4 SOFT MONEY AND ISSUE ADVOCACY

Chapter 23: Systemic Problems of the Campaign Finance System

The Committee's investigation into campaign financing during the 1996 election cycle exposed a system in crisis, with most problems stemming not from activities that are illegal under current law, but from those that are legal. Soft, or unrestricted and unregulated, money is a relatively new legal loophole in the campaign financing system. Since 1988, however, it has become the crux of many of the current problems uncovered by the Committee, including the offers of access for large contributions and the use of party-run issue ads on behalf of candidates.

Based on the evidence before the Committee, we make the following findings with respect to the role of soft money in the federal campaign finance system:

FINDINGS

- (1) The most insidious problem with the campaign finance system involved soft (unrestricted) money raised by both parties.** The soft money loophole, though legal, led to a meltdown of the campaign finance system that was designed to keep corporate, union and large individual contributions from influencing the electoral process.
- (2) The vast majority of issue ads identified specific candidates and functioned as campaign ads.**
- (3) Both parties went to significant lengths to raise soft money, including offering access to party leaders, elected officials, and exclusive locations on federal property in exchange for large contributions. Both parties used issue ads, which were effectively indistinguishable from candidate ads and which -
- unlike candidate ads -- can be paid for in part with soft (unrestricted) money, to support their candidates.**

INTRODUCTION

The Committee investigation into campaign financing during the 1996 election cycle exposed a system in crisis, with most of the problems stemming, not from activities that are illegal under the current law, but from activities that are legal.

For four days in September 1997, the Committee heard from respected experts who argued the case for campaign finance reform and presented recommendations to remedy the problems that plagued the 1996 election cycle.¹ The witnesses were virtually unanimous in declaring that the current campaign finance system is broken, that the problems are bipartisan, and that there are solutions available if both parties are willing to tackle the problem.

The witnesses included former Vice President Walter Mondale and former Senator Nancy Kassebaum Baker, as well as former Chairman of the Federal Election Commission (“FEC”) Trevor Potter and representatives from the Brookings Institution, American Enterprise Institute, Common Cause, the Campaign Reform Project, League of Women Voters, Cato Institute, Committee for the Study of the American Electorate, Public Campaign, Brennan Center for Justice, and professors of law and economics from the University of Virginia, Rutgers University and Colby College. The witnesses’ views ranged from those who support unlimited private money to finance campaigns to those who advocate public funding of elections on the ground that only removal of private money from elections will fix the system. Most, however, supported an incremental approach to reform falling somewhere between the two poles. With few exceptions, the witnesses advocated a soft money ban and curtailment of so-called issue advocacy advertisements as critical steps to reform. Thomas Mann of the Brookings Institution testified that if the system of unlimited soft money and unregulated issue advocacy is not reformed soon, “[I]t could become much worse. I could imagine a scenario in the next presidential election in which we will look back fondly on the experience of 1996.”²

SOFT MONEY

Soft money is a relatively new phenomenon in campaign financing, not having been raised in large amounts until the 1988 election cycle. Since then, however, it has become the crux of many of the problems with the current campaign finance system, including the drive to raise vast sums of money, the appearance of party leaders trading favors for contributions, and the appearance of wealthy individuals buying access to elected officials. Most of the witnesses agreed with the sentiment of former Vice President Walter Mondale who testified: “The work of this Committee, as difficult as it has been, has established a record that is available for every American that demonstrates that at the heart of this crisis in American democracy lies this new phenomenon called soft money.”³

Background on Soft Money

Because entities with large concentrations of wealth long have been recognized as having the potential to corrupt the federal election process, the law has prohibited corporations and labor unions from contributing to federal candidates for most of the 20th century.⁴ Contributions from individuals likewise have been capped by law in order to prevent the corruption or appearance of corruption of the electoral process.⁵ Soft money contributions provide corporations, labor unions, and wealthy individuals with a way around those legal restrictions.

Soft money has been defined as “contributions to political parties’ ‘non-federal accounts’ that fall outside the legal, ‘hard money’ limits on contributions to federal candidates.”⁶ The justification for allowing soft money contributions was to permit parties to spend money on state elections and so-called “party building” activities. The campaign finance hearings have demonstrated that this loophole is now being used by both parties to spend huge sums of soft money to support or defeat federal candidates.

In the late 1970s, after the passage of the current campaign finance laws, soft money did not exist. Former Vice President Mondale, who was on the national ticket in the 1976, 1980, and 1984 presidential elections, recalled that soft money at that time was used for the limited purposes of local voter registration.⁷ Mondale recalled that “during that period...the federal campaign regulations worked and ... worked quite well.” Mondale indicated that he believed former President Ford shared his views, which would explain why former President Ford also supports a soft money ban.⁸

The reason soft money was not widely used until roughly a decade ago⁹ is due in part to the fact that the current campaign finance system, including provisions for raising and spending soft money, evolved piecemeal out of numerous judicial decisions and agency rulings that fundamentally altered the campaign finance system originally envisioned by Congress. The law was patched together from, among other things, the 1976 Buckley decision which struck down spending limits that were part of the original campaign finance system;¹⁰ the 1978 FEC Advisory Opinion that gave political parties the option of spending soft money when a federal race coincided with a state race;¹¹ and recent federal court decisions that have expanded the use of so-called issue advocacy ads.¹² As Mondale noted, “what we have here is a new phenomenon, never contemplated or adopted into law by the Congress.”¹³

Both parties have raised and spent increasing amounts of soft money with every election cycle. In 1992, the first year that parties reported their soft money contributions, FEC records indicate that the total soft money raised by both parties was \$89 million. By 1994, that figure reached nearly \$107 million. In 1996, the amount of soft money raised by both parties more than doubled to \$262 million.¹⁴ FEC figures also indicate that the Republican Party has consistently raised more soft money than the Democratic Party. In 1992, Republicans raised \$15 million more than Democrats; in 1994, Republicans raised \$13 million more; and in 1996, Republicans out raised Democrats by \$14 million.¹⁵ If Congress does not act, those amounts are likely to continue to increase during the 1998 and 2000 election cycles.

FEC records also show that, while the Republican Party wins the overall race for soft money, in many instances both parties benefit from soft money contributions by the same donor. In 1996, for example, corporations such as RJR Nabisco, AT&T, and Walt Disney were among the top contributors to both parties. In the words of Common Cause President Ann McBride, “[S]oft money is not about ideology....It is about making sure ‘whoever wins, my special interest has a place at the table’....It is about gaining access and influence.”¹⁶

Soft Money Finds a Way into Federal Elections

“When Congress amended the Federal Election Campaign Act in 1979 to promote party-building, its purpose was not to allow national party committees to receive unlimited contributions or to accept corporate and labor funds,” according to Colby College Professor Anthony Corrado.¹⁷ Nevertheless, party leaders and candidates on both sides of the aisle over the years have devised numerous ways for millions of dollars in corporate and union money to be spent influencing federal elections. The most blatant use of soft money for federal purposes involves

issue advocacy. Additionally, soft money is funneled through state parties, congressional campaign committees, and leadership political action committees (“PACs”), where its use for federal election activity becomes difficult to trace.

Political parties have a constitutional right to inform the public of their positions on issues. However, in 1996, both parties ran televised advertising which they characterized as educating the public on issues, but which struck many viewers as actually promoting the election of each party’s candidates. These televised ads were paid for, in part, with soft money.

The issue ads run in 1995 and 1996 by the Democratic National Committee (“DNC”) were “focused on the Republican Congress’s role in the government shutdown, the future of Medicare, the strength of the economy and the reduction of crime in America,” according to the Annenberg Public Policy Center.¹⁸ Although these ads discussed pending legislative issues, many were designed to and did help President Clinton’s re-election efforts.¹⁹ The Annenberg study noted that the Republican National Committee (“RNC”) similarly engaged in a calculated effort to use soft money “before the Republican convention for ads that helped Bob Dole’s campaign.”²⁰ Former RNC Chairman Haley Barbour, who was involved in spending soft money on ads that told Bob Dole’s life story, told the press: “The law allows the party to do advertising on the issues. The Democrats have already spent money doing it. It does not have to be independent, and it can be candidate-specific. I can mention Bob Dole. But I can’t say, ‘Vote for Dole.’”²¹

When national political parties use soft money to pay for federal campaign activities such as the ads described above, they are required by law to spend a percentage of hard money as well.²² In presidential election years, national parties must spend a ratio of 65 percent hard money to 35 percent soft. State parties are also required to spend a combination of hard and soft money when paying for certain activities such as issue advocacy ads, but are often permitted by state law to use a greater proportion of soft money than the national parties. In 1996, both parties “took advantage of the more soft money favorable state party allocation formulas [by] transferring large sums to state party committees and encouraging state parties to pay for expenses so that more soft money could be used for their costs,” according to Corrado.²³ These transfers meant that more corporate and union money was used to pay for advertising when the ads were paid for by the state, rather than the national, parties.²⁴

Like the national party committees, the parties’ national senatorial and congressional campaign committees raise and spend soft money in ways that render prohibitions on corporate and union contributions virtually meaningless. Senatorial and congressional campaign committees are intended, as their names imply, to help elect United States Senators and Representatives. In 1996, the National Republican Senatorial Committee raised over \$29 million in soft money, compared with \$14 million raised by the Democratic Senatorial Campaign Committee. The National Republican Congressional Committee raised \$18.5 million in soft money, while the Democratic Congressional Campaign Committee raised \$12 million.²⁵ The amounts of soft money raised by the House and Senate committees increased dramatically over previous years, demonstrating the greater importance of soft money in the last election cycle.²⁶ Like soft money raised by the DNC and RNC, soft money raised by the House and Senate committees was spent

on activities such as issue advocacy.²⁷

Another indication that soft money is infiltrating federal elections is that it was raised and spent by at least one federal officeholder's "leadership PAC." Leadership PACs are established by a Member of Congress to help elect federal candidates. In 1996, the media reported that a leadership PAC, Americans for a Republican Majority, had raised at least \$175,000 in corporate money.²⁸ Most of this money was reported to have come from tobacco interests and was spent in Virginia, although at least \$12,000 in corporate money was reportedly transferred to the state party's hard money account.²⁹ A newspaper editorial noted, "[E]veryone knows that using [soft] money to defray overhead increases the non-corporate funds ... available to help Congressional candidates and secure [the leadership PAC Member's] place on the House leadership ladder."³⁰ When a federal officeholder raises large sums of corporate money for a leadership PAC, it seems evident that such funds may inure to the benefit of a federal candidate, rather than for party building or state election activities.

Soft Money Creates Appearance of Corruption and Undermines Public Financing

Burt Neuborne of the nonpartisan Brennan Center testified that, "[T]he democratic process is eroded by the desperate search for money."³¹ The raising and spending of tremendous amounts of soft money, in particular, destroys the basic tenet of the campaign finance law, which is to deter corruption and the appearance of corruption. Additionally, the search for soft money undermines the system of presidential public funding, which was originally put in place so that presidential candidates could rise above the fundraising fray.

The Supreme Court upheld the campaign finance law's contribution limits, in part, by holding that there is legitimate cause for concern from "the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions."³² The Court went on to say that, "Congress could legitimately conclude that the avoidance of the appearance of improper influence 'is also critical...if confidence in the system of representative government is not be eroded to a disastrous extent.'"³³

Roger Tamraz, a contributor to both parties, proudly extolled the virtues of soft money as the means for providing him with access to the White House.³⁴ Videotapes of Presidents Clinton and Reagan thanking supporters at the White House suggest special access for big donors. Offers of access are commonly used as an incentive to obtain large contributions. For example, individuals who raised or donated \$250,000 for the 1997 RNC Annual Gala were promised, among other things, "Breakfast and Photo Opportunity with Senate Majority Leader Trent Lott and Speaker of the House Newt Gingrich on May 13, 1997; Luncheon with Republican Senate and House Leadership and the Republican Senate and House Committee Chairmen of your choice."³⁵

The appearance of corruption, in which large contributions appear to be traded for access to government officials or favored treatment, and the resulting loss of public confidence in government are two of the most serious consequences of the soft money system. Less apparent,

but nearly as insidious, is the time elected officials must spend raising soft money. Former Vice President Mondale testified that, “[I]t is the most degrading and humiliating thing that can happen to a public officer to have to spend a substantial chunk of his or her time pleading for money in this kind of way That is one of the most powerful arguments for repeal of the soft money loophole.”³⁶ Evidence that President Clinton, Vice President Gore, and House Speaker Newt Gingrich made fundraising telephone calls should concern the American public, not because of where the calls originated (on or off federal property), but because the three most powerful elected officials in the country were spending time fundraising rather than focusing on national policy.

In addition to the corrupting influence of soft money, another reason to stem its flow is that it undermines the presidential public financing system. The campaign finance law provides for full public funding of the general presidential election. The law was enacted to prevent even the appearance of corruption that results when presidential candidates have to raise money from private sources. To qualify for public funds, the candidates must agree to spending limits and must swear, under penalty of perjury, not to accept contributions during the general election. In 1996, each major party nominee received \$62 million in federal funds, yet each spent countless hours fundraising. Scott Reed, the campaign manager for Dole for President, acknowledged that part of the Republican strategy in 1996 included fundraising to help defray the cost of issue ads that would help Bob Dole. In Campaign For President ‘96, Reed was quoted as saying, “We went out in April and May and raised \$25 million for the party, of which about \$17, \$18, or \$19 million was put into party building ads, which were Bob Dole in nature.”³⁷ Tony Fabrizio, a Dole pollster, echoed Reed’s statement, saying, “We were coming off a primary where we were flat broke....We had a candidate who was very sensitive to not having all of the money potentially available to him post-convention. So to say that [fundraising] wasn’t a driving factor, especially since we put him out on the road to raise \$25 or \$30 million for the party, would be unfair.”³⁸

Disclosure of Soft Money

Disclosure is a bedrock of the campaign finance system. The soft money system, however, gives parties a way to make large contributions and expenditures almost impossible to trace. One way soft money is hidden from public scrutiny is by transferring the funds from the national parties to the state parties. According to one expert who testified at the hearings:

Overall, the Democratic committees in 1996 transferred over \$64 million in soft money to state parties, or almost nine times more than in 1992. The Republican committees transferred \$50 million in soft money to state parties, or almost 10 times more than 1992. These transfers also serve to further obscure the already inadequate disclosure requirements imposed on national party committees. Because the committees are only required to report the amounts transferred to other committees, they do not have to account for how these funds were ultimately spent. That responsibility rests with state parties, and most state disclosure laws are so inadequate that it is impossible to determine how the funds were expended. By transferring large sums to the state or local level, national parties can avoid effective disclosure.³⁹

In addition to hiding soft money by funneling it through state parties, the RNC has avoided public scrutiny of its soft money expenditures by funneling money through tax-exempt organizations. (See Chapter 10.) One such organization that worked in coordination with the RNC to spend soft money is Americans for Tax Reform (“ATR”). (See Chapter 11.) In October 1996, the RNC gave \$4.6 million to ATR. Immediately after the contribution was made, ATR used the funds to pay for a direct mail campaign that aided Republican candidates in 150 congressional districts. Evidence suggests that the RNC coordinated with ATR on how the money would be spent. This coordination may result in a violation of federal election law; it also illustrates how soft money expenditures are hidden from public scrutiny and used to influence federal elections.

ISSUE ADVOCACY

At the Committee hearings, Daniel Ortiz, a professor of law at the University of Virginia, summarized what many of the campaign finance experts had to say about issue advocacy:

In the last election cycle, so-called issue advocacy became one of the most prominent and controversial weapons in the federal campaigns. It provided an easy way for individuals, political committees, corporations, and unions to spend money to influence elections without any regulatory control. Its impact cannot be exaggerated. To anyone interested in campaign finance reform, issue advocacy is the 800-pound gorilla. Without taming it, campaign finance reform, no matter how thoroughly it addresses public funding, soft money, PAC spending, or any other perceived problems, will come to naught. Issue advocacy represents a huge, gaping loophole of last resort.⁴⁰

As used in 1996, many televised ads were characterized as issue ads but appeared to function as attack ads on candidates. By claiming the ads to be discussions of issues, the ad sponsors were able to evade federal election law contribution limits and disclosure requirements applicable to candidate ads. In addition to providing a way for unlimited and undisclosed amounts of corporate and union money to influence elections, the so-called issue ads took control of the election out of the hands of the candidates and put it in the hands of the ad sponsors. Finally, since no disclosure laws apply, issue ads run by unknown organizations leave the public in the dark in terms of knowing who is financing candidate attack ads.

Background on Issue Ads

Issue ads are, by definition, supposed to be discussions of issues rather than candidates. In the leading case of Buckley v. Valeo, the Supreme Court held that ads which discuss issues are outside the scope of federal election laws, which apply only to “communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office.”⁴¹ A footnote to the opinion gives examples of terms of express advocacy, such as “‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ ‘reject.’” These phrases have become known as the Buckley “magic words,” providing a bright line test for when an ad is clearly subject to federal election laws. Ads that do not contain any of the Buckley magic

words are often claimed to be issue ads outside the limitations of the campaign finance laws.

Many of the witnesses testifying before the Committee indicated that many of the so-called issue ads functioned as candidate ads. Burt Neuborne of the nonpartisan Brennan Center testified:

What we have now is a group of very sophisticated people tiptoeing up to the line and laughing at the process because what they are doing is--they know they are engaged in election speech. Everybody else knows that they are engaged in election speech, but somehow we all have to pretend as though they are involved in educational speech.⁴²

The most comprehensive study to date of issue ads during the 1996 election cycle is the Annenberg Public Policy Center's Issue Advocacy During the 1996 Campaign: A Catalog. The Annenberg study examined ads broadcast by the political parties and at least two dozen groups, estimated to have spent between \$135 and \$150 million on issue advertising.⁴³ The Annenberg study found an even split between ads that generally favored Democrats or Democratic issues and those that favored Republicans or Republican issues. In addition to representing both sides of the aisle, issue ads were determined to be "the highest in pure attack" compared to presidential candidate ads and free air time speeches.⁴⁴ The study also determined that almost 90 percent of these ads named a specific candidate.⁴⁵

The 1996 election cycle saw numerous groups from across the political spectrum broadcasting issue ads. The groups included the political parties, unions, corporations and tax-exempt organizations.

Both political parties spent millions of dollars on issue advocacy in the 1996 election cycle. Party ads which referred to the presidential candidates garnered the most publicity, but the parties did not limit their issue ad activity to presidential candidates. The National Republican Congressional Committee was by far the most active party committee to engage in issue advertising outside of the presidential arena, conducting a \$10 million issue ad campaign for the benefit of Republican House freshman.

The AFL-CIO was one of the leaders in airing issue advocacy ads during the 1996 election cycle. Early in the year it announced its plans to spend \$35 million to counter the Republican "Contract with America."⁴⁶ Ultimately, the union spent about \$25 million on media advertising in 44 congressional districts. The majority of the ads attacked Republican House freshman who won office in 1994.

Tax-exempt organizations were also active in televising ads that named candidates, but claimed to be issue discussions. Some of these organizations were newly established in 1996. Viewers of union ads at least knew who was paying for the ads. The same was not true of issue ads paid for by new or unknown tax-exempt organizations, which enable a corporation or wealthy individual to remain out of view behind the sponsoring organization. Norman Ornstein noted: "There seems to be little doubt that at least a few of these organizations were set up just to run

those ads....[I]t is clear most of these ads...were directly intended and targeted to influence elections, and in many, many cases, to blur the lines as to where they were coming from.”⁴⁷ See, for example, Chapters 11, 12 and 13 of this Report discussing Americans for Tax Reform, Citizens for Reform, Citizens for the Republic Education Fund, and the Coalition for Our Childrens Future, all of which ran televised ads attacking candidates by name close in time to the 1996 elections, but none of which admitted to sponsoring candidate ads subject to federal election laws.

One of the issue ads discussed at the Committee hearings was aired against Bill Yellowtail, a Democratic congressional candidate in Montana, and was paid for by Citizens for Reform, a tax-exempt organization controlled by Triad Management Services. (See Chapter 12.) The ad asks: “Who is Bill Yellowtail? He preaches family values, but he took a swing at his wife. And Yellowtail’s explanation? He ‘only slapped her.’ But her nose was broken.” This is the kind of personal attack ad that candidates shy away from producing themselves, but that they might quietly welcome if it is paid for by an outside group with which the candidate claims no association.

Ann McBride, executive director of Common Cause, testified:

What is happening with issue ads is fundamentally altering the electoral system in this country. This is beyond the corruption issues. And what you will have is a situation if this continues where candidates are bit players in their own campaigns and where the American people in looking at the debate will not know what these candidates stand for because their voices will be muted by all of these interest groups for and against...[W]e are really, if we allow this, altering our basic electoral system in a way that is quite dangerous...for our democracy.⁴⁸

This situation is detrimental to candidates who often lack the time or money to respond to attack ads. In addition, because the candidates are in the dark about who is attacking them, they cannot discredit the ad by exposing the individual or corporation behind it. In one case described in Chapter 12 of this Report, Representative Calvin Dooley of California faced televised attack ads paid for by the Triad-run, tax-exempt organization Citizens for Reform (“CFR”). After the election, Dan Gerawan, a California farmer, admitted to a newspaper that he had provided CFR with the funds to pay for the ads. If he had not made this admission to the media, the public and Dooley may not have learned who paid for the ad.⁴⁹ The ads attacked Dooley for spending taxpayer money on “radical lawyers,” referring to Dooley’s support of the Legal Services Corporation (“LSC”). Gerawan allegedly opposes the LSC after facing a lawsuit brought by indigent plaintiffs represented by LSC lawyers. While Dooley won re-election in spite of the ads, he was forced to spend his campaign resources combating, not his opponent in the election, but a relatively unknown and unforeseen enemy.⁵⁰

Issue ads have accelerated since the 1996 elections. For example, in 1997, the RNC provided \$750,000 in funds to pay for televised ads in a special election in New York’s 13th Congressional District.⁵¹ The RNC characterized the ads were issue ads, even though they

attacked the Democratic candidate by name and mirrored campaign ads broadcast by the Republican candidate. Apparently, neither the DNC nor the Democratic candidate was able to respond to the attacks. The Republican candidate won handily, despite earlier polls indicating a close race. In 1998, the media reported that a new group called Americans for Job Security plans to spend \$100 million in corporate funds over the next five years on a variety of issue ads.⁵²

PROPOSALS FOR REFORM

The campaign finance experts that testified before the Committee have highlighted closing the soft money and issue advocacy loopholes as key steps to meaningful campaign finance reform:

“Soft money...is the most pressing issue facing the political system at this time.”

--Professor Anthony Corrado⁵³

“It is imperative that we close the major loopholes that make a mockery of [the] law. In particular, the soft money and sham issue advocacy loopholes were exploded on a massive scale.”

--Becky Cain, President, League of Women Voters⁵⁴

“The question we asked ourselves was: ‘Do we really want to be part of a system and perpetuate a system in which the only way you can get representation is to buy it?’ Once we got the question right, the answer was easy. No, we do not want to be any part of it.”

--Douglas Berman, President, Campaign Reform Project⁵⁵

“[A]ll of these rivers and oceans of money are swamping this system. They are discouraging good people from seeking or holding office. They are converting our most important public officers from officers into essentially fund-raisers, and the spectacle of this massive amount of money being raised is causing an appalling diminution of public trust in the system.”

--Former Vice President Walter Mondale⁵⁶

“[I]t is this nexus of soft money and issue advocacy which is poisoning the system that you value.”

--Norman Ornstein, Fellow, American Enterprise Institute⁵⁷

Many of the experts who testified provided concrete legislative proposals ranging from eliminating all contribution limits to enacting a system of public funding. While there are some differences of opinion in the reform community, many of the specific proposals outlined below contain similar recommendations, especially regarding the containment of soft money and issue advocacy.

Kassebaum-Baker/Mondale

Former Vice President Walter Mondale and former Senator Nancy Kassebaum-Baker have joined together in an effort to stimulate public support for campaign finance reform. Kassebaum-Baker and Mondale strongly believe that reform is imperative to restoring public confidence in the electoral system. Their efforts have secured the support of three former presidents for campaign finance reform: Ford, Carter, and Bush.

The foundation of the Kassebaum-Baker/Mondale reform model is a soft money ban that would prohibit corporations and labor unions from contributing to the parties and would cap the amount individuals could give to the parties. In addition, they would close the issue advocacy loophole. Although they make no specific recommendations as to how to achieve this, they believe that “clever scripting” should not be a way to evade the campaign finance restrictions. In addition, they support disclosure of sources of money and amounts spent for all campaign activity masquerading as issue advocacy.

The former elected officials also recommend strengthening the Federal Election Commission by providing adequate funding and limiting commissioners to one term. In addition, they acknowledge the importance of immediate disclosure of all last-minute contributions.

League of Women Voters

A number of witnesses who testified over the four days of hearings backed a proposal sponsored by the League of Women Voters. In addition to Becky Cain, the League’s president, supporters of the proposal included Thomas Mann of the Brookings Institution, Norman Ornstein of the American Enterprise Institute, and Professor Anthony Corrado of Colby College. The highlights of the league’s proposal include a soft money ban. The proposal would, however, raise the hard money limits by doubling the current \$25,000 annual hard money limit, thereby permitting individuals to give a maximum \$25,000 to multiple candidates and \$25,000 to the parties.

The proposal also recommends that any advertisement using a candidate’s name or likeness within a set number of days of an election (proposals range from 60 to 90) be considered a candidate ad that falls under the campaign finance law’s restrictions. This proposal would not preclude the ads from being run, but would ensure that such ads would be paid for using only disclosed, regulated money. The League proposal also suggests strengthening the Federal Election Commission’s enforcement powers and improving disclosure by requiring mandatory electronic filing of campaign finance reports. The League would attempt to decrease the cost of campaigns by providing that, in exchange for the licenses they receive to broadcast over the public airways, television broadcasters provide candidates with a certain amount of free air time. To encourage participation, the League would also provide a tax credit for in-state donors who contribute \$100 or less to a campaign.

Common Cause

Common Cause President Ann McBride and Vice President Don Simon also testified

before the Committee. Common Cause has been an outspoken advocate of S. 25, the McCain-Feingold campaign finance reform bill. Another witness, Professor Burt Neuborne of the Brennan Center, is also a proponent of S. 25. At the time of the hearings, none of the witnesses knew what the final version of S. 25 to be voted on by the Senate would contain, but all supported the bill's broad framework which included a soft money ban, a method to close the issue advocacy loophole, and improved disclosure. Common Cause also advocated voluntary spending limits for candidates, and would provide incentives such as reduced television costs to candidates who choose to limit their financial activity.

Campaign Reform Project

The Campaign Reform Project, which was represented at the hearings by Douglas Berman, has called for a ban of soft money, and also supports electronic filing of campaign contributions. The group represents members of the business community who support a soft money ban.

Public Campaign

Ellen Miller is the executive director of Public Campaign, which advocates "clean money" or public financing of elections. Common Cause and the League of Women Voters also support public funding as an ultimate goal, but indicated that they do not see it as a feasible option in the immediate future. By definition, soft money would be banned under a public funding system. In addition, issue ads would have to be controlled so that private money would not come into the system through that device. And, like other reform proponents, Public Campaign supports a stronger Federal Election Commission to ensure the campaign finance law is enforced.

Disclosure Only

Edward Crane and Roger Pilon represented the libertarian Cato Institute. The Cato Institute takes the position that any limits on contributions or other regulation of the political system violate the First Amendment and are unconstitutional. In addition to proposing the removal of all limits on contributions, the Cato Institute also stands for the proposition that the FEC should be abolished. According to Crane and Pilon, the government should in no way be involved in regulating the political process. The Cato Institute does support disclosure of contributions.

CONCLUSION

The Committee investigation has built a strong case for the need to close the soft money and issue advocacy loopholes. Until these loopholes are closed, the bulk of the problems plaguing the campaign finance system will be, not illegal conduct, but conduct that is legally permitted by the federal election laws.

1. Committee Hearings on September 23, 24, 25 and 30, 1997.

2. Thomas Mann, 9/24/97 Hrg., p. 32.
3. Vice President Mondale, 9/30/97 Hrg., p. 11.
4. "It has been policy and law in this country for 90 years that corporate money, aggregations of wealth in corporations are banned from Federal elections. The Supreme Court has repeatedly upheld that ban as serving compelling public purposes." Donald Simon, 9/24/97 Hrg., p.70.
5. Buckley v. Valeo, 424 U.S. 1 (1976).
6. Rosenberg, Lisa. A Bag of Tricks: Loopholes in the Campaign Finance System. Washington, D.C.: Center for Responsive Politics, 1996, p. 3.
7. Vice President Mondale, 9/30/97 Hrg., p. 115.
8. Vice President Mondale, 9/30/97 Hrg., p. 114.
9. Because reporting by parties of soft money contributions was not required by the FEC until 1992, anecdotal evidence is the primary resource available for the claim of soft money's slow growth during the 1980s.
10. Buckley v. Valeo, 424 U.S. 1 (1976).
11. FEC Advisory Opinion 1978-10, Allocation Costs for Voter Registration.
12. See, for example, FEC v. Christian Action Network, 92 F.3d 1178 (4th Cir. 1996).
13. Vice President Mondale, 9/30/97 Hrg., pp. 17-18. Chairman Thompson agreed with Mondale, noting: "Since Congress last acted in this area, things have happened around and outside of Congress that have totally changed the system, and we have a totally different system today, as I see it, without Congress having acted. So I would think, if for no other reason, as a matter of congressional prerogative that the laws of this land should be basically addressed by the Congress of the United States; that we would want to take a look at it." 9/30/97 Hrg., p. 15.
14. See Appendix A: National Party Non-Federal Activity. Source: Federal Election Commission. In 1996, the Republican Party's national committees raised about \$138 million, while the Democratic Party's national committees raised about \$124 million.
15. See Appendix A. The Republican Party also raises more hard money than the Democratic Party. In 1996, for example, FEC records indicate that Republicans raised \$416 million in hard money, compared to \$221 million raised by Democrats.
16. Ann McBride, 9/24/97 Hrg., p. 38.
17. Anthony Corrado, 9/25/97 Hrg., p. 4.

18. Issue Advocacy Advertising During the 1996 Campaign: A Catalog, The Annenberg Public Policy Center, 1997, p.32.

19. See Chapter 32.

20. Annenberg Study, p. 53. See also Chapter 33.

21. Washington Times, 3/5/96. This statement is in sharp contrast to Barbour's testimony before this Committee, in which he claimed that the RNC did not use soft money to help federal candidates: "These non-federal monies, funds, could not be and were not spent for federal election purposes." Barbour, 7/24/97 Hrg. p. 126. See also Barbour deposition, 7/19/97, p. 86, in which Barbour stated, "The RNSEC [The RNC's soft money account] may not pay for any Federal campaign activities."

22. FEC Advisory Opinion 1995-25.

23. Anthony Corrado, 9/25/97 Hrg., p. 7.

24. See The Clinton Ad Campaign Run Through the DNC/The Dole Ad Campaign Run Through the RNC, Common Cause, 10/97.

25. See FEC records.

26. See Appendix A.

27. Experts agree that soft money into the House and Senate campaign committees stretches to the limit the credibility of the argument that the money is being used only for party building and not to elect federal candidates. In his testimony, Professor Corrado said, "[W]hat you had was this expanding universe of activities that could fall under this hard/soft money rule, and they applied it to the national committees to the point where...the Senate and congressional campaign committees, which the average voter would think basically deal with federal elections, since they are designed to elect federal officials, actually use soft money now because of the non-Federal portion of their activities." Anthony Corrado, 9/25/97 Hrg., p. 65.

28. Roll Call, 2/22/96.

29. Roll Call, 2/22/96.

30. Roll Call, 2/22/96.

31. Burt Neuborne, 9/25/97 Hrg., p. 151.

32. Buckley at 27.

33. Buckley at 27 (citations omitted).

34. Roger Tamraz, 9/18/97 Hrg., pp. 81-86.
35. Exhibit 1070-M.
36. Vice President Mondale, 9/30/97 Hrg., p. 20.
37. Campaign for President: The Managers Look at '96, Harvard Institute of Politics: Boston, 1996, p. 117.
38. Campaign for President, p. 117.
39. Anthony Corrado, 9/25/97 Hrg., pp. 7-8. See also, for example, Roll Call, 10/27/97 (In 1997, RNC gave about \$660,000, the NRSC \$375,000 and the NRCC \$1.2 million, to Virginia Republican Party and Republican candidates, often without disclosure.).
40. Daniel Ortiz, 9/25/97 Hrg., p. 11.
41. Buckley at 44.
42. Burt Neuborne, 9/25/97 Hrg., p. 136.
43. Annenberg, p. 3.
44. Annenberg, p. 8.
45. Annenberg, p. 7.
46. Rosenberg, p. 11.
47. Norman Ornstein, 9/24/97 Hrg., p. 42.
48. Ann McBride, 9/24/97 Hrg., p. 33.
49. The Committee attempted to interview Gerawan, but he refused to provide a voluntary interview. The Majority refused to issue a deposition subpoena to Gerawan.
50. The Minority had planned to call Representative Dooley as a witness to testify about the way in which the CFR issue ads affected his campaign, but the Majority declined to permit the Minority to present testimony on Triad and Dooley never testified.
51. See New York Times, 11/5/97.
52. Roll Call, 1/15/98. The new group is allegedly “run by David Carney, a former campaign consultant to GOP presidential candidate Bob Dole and Representative Vito Fossella of New York.” The article cites documents in which the group’s officials state that the group “already have \$7 million committed this year and plan to spend 85 percent of their money directly on

communications.”

53. 9/25/97 Hrg., p. 3.

54. 9/24/97 Hrg., p. 150.

55. 9/24/97 Hrg., p. 146.

56. 9/30/97 Hrg., p. 12.

57. 9/24/97 Hrg., p. 75.